

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF TİRYAKİ v. TÜRKİYE

(Application no. 16373/18)

JUDGMENT

STRASBOURG

3 March 2026

This judgment is final but it may be subject to editorial revision.



In the case of Tiryaki v. Türkiye,

The European Court of Human Rights (Second Section), sitting as a Committee composed of:

Jovan Ilievski*, President*,
Oddný Mjöll Arnardóttir,
Stéphane Pisani*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 16373/18) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 20 March 2018 by a Turkish national, Mr Şahin Tiryaki ("the applicant"), who was born in 1984, was detained in Diyarbakır at the time of lodging the application and was represented by Mr M. Karaman, a lawyer practising in Diyarbakır;

the decision to give notice of the complaints concerning the domestic courts' failure to examine witnesses in person and to deliver a reasoned judgment to the Turkish Government ("the Government"), represented by their Agent at the time, Mr Hacı Ali Açıkgül, former Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye, and to declare inadmissible the remainder of the application;

the parties' observations;

the decision to reject the Government's objection to the examination of the application by a Committee;

Having deliberated in private on 3 February 2026,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

1. The application concerns, under Article 6 §§ 1 and 3 (d) of the Convention, the alleged unfairness of criminal proceedings against the applicant on account of the domestic courts' failure to examine in person two witnesses, A.İ.Ö. and H.A., whose evidence formed the basis of his conviction for aiding and abetting an armed terrorist organisation, namely the PKK (Workers' Party of Kurdistan). The application further pertains, under Article 6 § 1 of the Convention, to the domestic courts' failure to state the grounds on which they decided to attach greater weight to the pre-trial statements made by A.İ.Ö. and H.A., which were subsequently retracted, rather than to the evidence given by them at their own trial in a separate set of criminal proceedings.

2. On 27 February 2014 the Diyarbakır Sixth Assize Court ("the trial court") convicted the applicant under Article 220 § 7 of the Criminal Code, in conjunction with Article 314 § 2 of the same Code (see for the text of these provisions as applicable at the relevant time, *İmret v. Turkey (no. 2)*, no. 57316/10, §§ 19-20, 10 July 2018), of aiding and abetting an armed

terrorist organisation, and sentenced him to six years and three months' imprisonment. The relevant part of its reasoned judgment read as follows:

> "Having assessed the allegation, the defendant's submissions, the arrest report and the photo-identification report, taken together, it is observed that A.İ.Ö. and H.A., who were on trial in case file no. 2007/326, were arrested while about to cross into Northern Iraq in order to join the PKK terrorist organisation; these individuals indicated in their statements, taken in the police station in the presence of a lawyer, that they had been influenced by Şahin Tiryaki's propaganda about joining the organisation, and that Şahin Tiryaki had helped them on their way to Northern Iraq; they identified Şahin Tiryaki from his photograph, H.A. subsequently repeated these statements at the prosecutor's office and when being questioned by the investigating judge, and both individuals were arrested while on their way to join the mountain team of the PKK terrorist organisation.
>
> It has been established that the defendant Şahin Tiryaki persuaded A.İ.Ö. and H.A. to join the PKK terrorist organisation, provided them with the necessary support, assisted them in obtaining passports for international [travel], and thus aided the PKK terrorist organisation."

3. At no stage of the criminal proceedings against the applicant had A.İ.Ö. and H.A. been examined as witnesses in person before the trial court.

4. On 19 September 2016, on an appeal by the applicant, the Court of Cassation upheld his conviction.

5. On 17 January 2017 the applicant lodged an individual application with the Constitutional Court, complaining, among other things, of a breach of his right to a fair trial. He argued that he had been denied the possibility of examining A.İ.Ö. and H.A. in person before the trial court.

6. On 29 December 2017 the Constitutional Court dismissed the application as being manifestly ill-founded. With regard to the applicant's complaint concerning his inability to examine A.İ.Ö. and H.A. as witnesses, the Constitutional Court found it sufficient that the trial court had obtained the case file of the criminal proceedings against A.İ.Ö. and H.A which contained their pre-trial statements incriminating the applicant and their subsequent retraction of those statements during their own trial.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (d) OF THE CONVENTION

7. The applicant complained under Article 6 §§ 1 and 3 (d) of the Convention that the criminal proceedings against him had been unfair on account of the domestic courts' failure to examine in person the witnesses A.İ.Ö. and H.A., whose evidence formed the basis of his conviction for aiding and abetting the PKK.

A. Admissibility

8. The Government invited the Court to declare the application inadmissible as being manifestly ill-founded. They argued that the applicant's complaint concerning the domestic courts' failure to examine witnesses in person essentially concerned those courts' evaluation of the facts and evidence before them and was thus of a fourth-instance nature.

9. The Court notes that the applicant's complaint relates to a distinct procedural safeguard which is guaranteed by Article 6 §§ 1 and 3 (d) of the Convention. It cannot therefore be regarded as a complaint of a fourth-instance nature and, on that basis, the Government's objection is dismissed.

10. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Preliminary remarks

11. The Court notes at the outset the Government's submission that the applicant's request to have A.İ.Ö. and H.A. heard as witnesses had not been made with a view to examining them, but rather to informing the trial court that those individuals had retracted their previous statements at their own trial and had made statements favourable to the applicant. The Court cannot accept this argument, however, as the applicant clearly asked the trial court to examine A.İ.Ö. and H.A. as witnesses. It further notes in that context that the trial court was already aware of the change in A.İ.Ö.'s and H.A.'s statements, since it was the same court which had tried and acquitted them.

12. Moreover, and contrary to the Government's argument to the effect that the applicant had waived his right to have the two witnesses examined in person, the applicant's lawyer asked the trial court at the first hearing, held on 31 January 2008, to examine A.İ.Ö. and H.A. in person, arguing that in their own trial they had retracted their previous incriminating statements about the applicant. However, the trial court limited itself to obtaining the case file of the criminal proceedings against A.İ.Ö. and H.A., which contained their retraction of those incriminating statements. While the Government are correct in asserting that the applicant's inability to examine A.İ.Ö. and H.A. in person was not raised in his appeal to the Court of Cassation, he subsequently raised this complaint in his application to the Constitutional Court. That court declared his application inadmissible, holding that it had been sufficient for the trial court to obtain the case file of the criminal proceedings against A.İ.Ö. and H.A. That being so, the Court has no basis for concluding that the applicant expressly waived his right to examine witnesses in person before the trial court as a result of having failed

to raise this complaint with the Court of Cassation (see for the relevant principles *Murtazaliyeva v. Russia* [GC], no. 36658/05, §§ 117-18, 18 December 2018).

2. Alleged failure to examine prosecution witnesses in person

13. The general principles with regard to complaints relating to the non-attendance at the trial of prosecution witnesses and the use by the courts of the evidence given by those witnesses outside the trial may be found in *Schatschaschwili v. Germany* ([GC], no. 9154/10, §§ 100-31, ECHR 2015) and *Al-Khawaja and Tahery v. the United Kingdom* ([GC], nos. 26766/05 and 22228/06, §§ 118-47, ECHR 2011; see also *Faysal Pamuk v. Turkey*, no. 430/13, §§ 44-50, 18 January 2022, for a concise summary of those principles).

14. The Court will therefore apply the three-pronged test formulated in the above case-law and examine

(i) whether there was a good reason for the non-attendance of the witnesses at the trial;

(ii) whether the evidence given by the absent witnesses was the sole or decisive basis for the applicant's conviction or carried significant weight in that regard; and

(iii) whether there were sufficient counterbalancing factors to compensate for the handicaps under which the defence laboured as regards the evidence given by the absent witnesses.

(a) Whether there was a good reason for the non-attendance of A.İ.Ö. and H.A. at the trial

15. The Government argued that the applicant had been tried for a terror offence threatening the general security of the country and his trial had taken place in an area where terrorist acts had been concentrated. For that reason, the trial court had not found it necessary to examine A.İ.Ö. and H.A. in person.

16. The Court notes, however, that the trial court did not rely on any of the arguments subsequently put forward by the Government for not ensuring the presence of A.İ.Ö. and H.A. In any event, given that A.İ.Ö. and H.A. had been tried and acquitted by the same court which tried and convicted the applicant, there does not appear to be any good reason for their non-attendance at the applicant's trial. Thus, the Court cannot accept the Government's arguments in this regard.

(b) Whether the evidence of the absent witnesses was the sole or decisive basis for the applicant's conviction or carried significant weight in that regard

17. The Court notes that the applicant's conviction of aiding the PKK was based, to a decisive extent, on the statements made by A.İ.Ö. and H.A. at the

investigation stage, in which they accused him, among other things, of encouraging them to join the PKK and providing them with the necessary support (see paragraph 2 above).

(c) Whether there were sufficient counterbalancing factors to compensate for the handicaps under which the defence laboured

18. The Government submitted that the applicant had been duly informed of the statements made by A.İ.Ö. and H.A. at all stages of the proceedings, that the trial court had read out their statements to the applicant and his lawyer, and that the applicant had had an opportunity, of which he had availed himself, to submit his version of events to the trial court. The Court has already held, however, that the opportunity to challenge and rebut absent witnesses' statements cannot, of itself, be regarded as a sufficient counterbalancing factor to compensate for the handicap under which the defence laboured (see *Palchik v. Ukraine*, no. 16980/06, § 48, 2 March 2017, with further references). There is no reason to depart from that finding in the present case.

19. In those circumstances, the Court further notes with concern that although the Constitutional Court's usual practice with regard to complaints concerning absent witnesses is largely in line with the Court's case-law on this issue, it did not on this occasion apply the above-mentioned three-pronged test to the applicant's case, and thus fell short of conducting a Convention-compliant review of his complaint.

20. Accordingly, the Court concludes that the domestic courts' failure to examine A.İ.Ö. and H.A. in person, without a good reason for their absence, restricted the applicant's ability to properly and fairly test the reliability of their evidence, which carried decisive weight for his conviction, to an extent that tainted the overall fairness of the proceedings against him.

21. There has therefore been a violation of Article 6 §§ 1 and 3 (d) of the Convention.

II. OTHER COMPLAINTS

22. The applicant also complained under Article 6 § 1 of the Convention of the domestic courts' failure to sufficiently indicate the grounds on which they had convicted him and to explain why they had attached greater weight to the incriminatory pre-trial statements made by the witnesses A.İ.Ö. and H.A. than to the latter's retraction of those statements at a later stage. Having regard to the facts of the case, the submissions of the parties and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. The applicant claimed 48,000 euros (EUR) in respect of pecuniary damage and submitted that this amount was equivalent to what he would have earned as a teacher had he not spent four years and eight months in prison as a result of the unfair proceedings. The applicant further claimed EUR 50,000 in respect of non-pecuniary damage and EUR 1,309 in respect of the costs and expenses incurred before the Court.

24. The Government contested those claims.

25. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable. Notwithstanding that conclusion, the Court reiterates that the most appropriate form of redress would be a retrial in accordance with the requirements of Article 6 of the Convention, should the applicant so request (see *Süleyman v. Turkey*, no. 59453/10, § 110, 17 November 2020).

26. Having regard to the documents in its possession, the Court considers it reasonable to award the full sum claimed in respect of the costs and expenses incurred before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 §§ 1 and 3 (d) of the Convention admissible;

2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention;

3. *Holds* that there is no need to examine the admissibility and merits of the remaining complaint under Article 6 § 1 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,309 (one thousand three hundred and nine euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 March 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President